

Nasu Sheikh and Others

Vs

The State of Bihar

Criminal Appeal No. 132 of 1969

(A. N. Grover, M. H. Beg JJ)

21.03.1972

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of the Patna High Court.
2. The appellants were convicted under Section 7 of the Essential Commodities Act, 1955, read with the relevant provisions of the Bihar Foodgrains (Control Movement) Order, 1957. They were sentenced to undergo rigorous imprisonment for 18 months and to pay a fine of Rs. 250/- each. In default they were to undergo further simple imprisonment for two months. 64 Maunds of paddy which was seized from them was ordered to be forfeited. They filed an appeal to the Sessions Court which was dismissed and their conviction and sentences were upheld. The High Court was moved in revision. The conviction of each one of the accused persons was maintained as also the sentences of imprisonment but the sentence relating fine was set aside.
3. The facts are not in dispute. The appellants before us are all cultivators and they live on the border of Bihar and West Bengal. They cultivate lands in Mouza Jalalpur (a village in the State of Bihar). They also have lands in village Farakka which is in the State of West Bengal. On December 23, 1963, at about 8 a.m. in the morning they were carrying 64 maunds of paddy in 7 bullock carts. It is claimed that each one of the appellants was carrying his own paddy in his bullock cart and was driving it himself. It is alleged that they were intercepted by the Assistant Sub-Inspector, S. K. Jha while they were only 75 yards from the border of West Bengal. When questioned by that police officer the explanation that they gave was that they were taking the paddy to village Faridpur which is another village in the State of Bihar. This was being done pursuant to their commitment with one Sheikh Usman Gani who was produced as D.W. 2.
4. Both the prosecution and the defence examined certain witnesses. D.W. 2 Usman Gani stated that he had advanced a sum of Rs. 1,000/- to the appellants and the paddy was being carried to his village Faridpur. The other defence evidence was also to the same effect. However, the defence evidence was not believed. The High Court observed that an attempt had been made on behalf of the defence to show that village Faridpur was to the east of the place of occurrence on the road leading to the West Bengal but no reliance could be placed on the defence evidence. The High Court proceeded to say :

"It is true that there is some confusion in the statement of some of the prosecution witnesses but it appears that the evidence of P.W. 6 Assistant Sub-Inspector of Police, Shobhakhant Jha is not only accurate but also acceptable."

The particular portion relied upon was extracted. It was to the effect that the place where the accused persons had been caught was a kacha road running from west to east and was known as Jalalpur-Tildanga Road. Tildanga was within the State of West Bengal at a distance of 75 yards towards east from the place where the accused persons were surrounded and caught. The learned Judge of the High Court felt that the police officer had not been cross-examined on the point whether in between the place where the carts were seized and the West Bengal border there lay any other village. It was pointed out that the appellants were residents of West Bengal.

5. Learned counsel for the appellants has invited our attention to the statement of A.S.I., S. K. Jha who was posted at Barharwah police station on December 23, 1963. The following portion of his statement in cross examination may be reproduced :

"I do not remember of any village known as Faridpur within Barharwa P. S. Village Ladhopara is about 50 yards from the place where I caught the accused persons, i.e., the P.O. I do not remember the names of villages, if any, lying within the four sides of Village Lodhapara but there are certain villages towards west. I do not exactly remember of any village on other side of Ladhopara. I can't say if there is any village towards east of Ladhopara."

6. A great deal of emphasis has been laid on the manner in which the aforesaid officer tried not to give the correct information about the geographical situation of village Faridpur. It had also been pointed out and that fact has not been disputed on behalf of the State that no proper plan was prepared showing the distance between the place where the carts were intercepted and seized and the West Bengal border or the exact location giving the surrounding villages. It is no where to be found in the statement of A.S.I., Jha that there was no road leading from the place where the carts were seized to village Faridpur. The statement on which the High Court relied does not exclude the possibility of some road leading to village Faridpur. The most serious infirmity, in our opinion, is the omission to prepare a proper plan showing the distance from the border of West Bengal as also the exact situation from where the carts were seized. It has not been explained by the prosecution why such a plan was not prepared. Even P.W. 4 Ismail Sheikh had stated that there was one Rasta to the east for going to Faridpur from Lodhapara and that the appellants had land in Jalalpur and had been seen selling paddy in Faridpur. It was also stated by P.W. 3 Ezhar Hussain that Faridpur was east of Lodhapara village and Tildanga and Faridpur were adjacent villages. Faridpur was also situate within the jurisdiction of police station Barharwa. The evidence of A.S.I. Jha on which the High Court mainly relied was accepted without appreciating that he was bound to know the exact location of Faridpur and yet he stated that he did not remember whether there was any village known as Faridpur within his own police station. In our judgment the police officer made an attempt to deliberately withhold a fact which was bound to be within his knowledge as he was posted to police station Barharwa.

7. The Bihar Foodgrains (Movement Control) Order, 1957, was promulgated in exercise of the power conferred by Section 3 of the Essential Commodities Act, 1955. Clause 3 of the Order provides that "no person shall export or attempt to export or abet the export of foodgrains except under and in accordance with a permit issued by the State Government in this behalf". It is true that the appellants did not possess any permit but at the earliest opportunity while they were well within the border of the State of Bihar they had explained that they were taking the paddy to village Faridpur. In the absence of a proper plan and the information in respect of the correct geographical position of Faridpur which was suppressed by A.S.I. Jha on whose testimony the High Court largely relied it was not safe to convict the appellants of a breach of Clause 3 of the Order.

8. It is noteworthy that even in the seizure list Exts. 1/1 and 1/2 there was no mention of the distance between the State of West Bengal and the place where the carts were intercepted. In the first information report the distance was not given. According to prosecution witnesses Ezhar Hussain and Ismail Sheikh the distance was about half a mile. It is a highly unsatisfactory feature of this case that the distance had not been given either in the first information report or in any of the other documents which were contemporaneously prepared. We say this because the question of distance assumes importance in the light of the decision of this Court in Malkiat Singh and Another v. State of Punjab. ((1969) 2 SCR 663). In that case also the question was whether an offence had been committed under Section 7 of the Essential Commodities Act, read with paragraph 3 of the Punjab Paddy (Export Control) Order, 1959. It was held that as the paddy was seized while inside the Punjab boundary there was no export of paddy outside the State of Punjab. It was observed that it was possible that the appellants might have changed their mind at any time between the place seizure and the State Boundary. It is true that there the distance where the lorry containing the paddy was stopped was 18 miles from the Punjab-Delhi boundary. In the present case the distance certainly appears to be much less but in the absence of proper contemporaneous documents which ought to have been prepared and the omission from the first information report of the distance we are not satisfied that the possibility that the appellants might have changed their minds between the place of seizure and the boundary of West Bengal can be excluded.

9. For all the above reasons this appeal is allowed and the conviction and sentences of the appellants are hereby set aside. They are already on bail and their bail bonds shall stand discharged.

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